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VIA EXPRESS MAIL, Label No. EL 973656432 US
Date: December 22, 2003

Attorney Docket No. Heraeus 385-WCG

#12
1-5-04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Klaus-Dieter Nehren, et al.
Serial No. : 10/055,658
Filed : January 23, 2002
For : APPARATUS FOR EMPTYING A HOSE BAG
Art Unit : 3754
Examiner : Joseph A. Kaufman

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CORRECTED BRIEF ON APPEAL PURSUANT TO 37 CFR §1.192

SIR:

This corrected Brief on Appeal is being submitted in response to the Communication dated November 11, 2003, and includes a corrected copy of the claims.

This is an appeal from the final rejection by an Examiner of Art Unit 3754.

(1) REAL PARTY IN INTEREST

The instant application is owned by Heraeus Kulzer GmbH & Co., K.G.,
Gruner Weg 11, 63450 Hanau, Germany, record owner hereof.

(2) RELATED APPEALS AND INTERFERENCES

The undersigned is not aware of any appeals, interferences, reexaminations, infringement actions, or the like, in any related applications.

(3) STATUS OF CLAIMS

The claims pending in this application are claims 1-6, and all of said claims are on appeal.

(4) STATUS OF AMENDMENTS

The last amendment made was that filed on February 4, 2003, and said amendment was entered. There are no unentered amendments.

(5) SUMMARY OF INVENTION

Each of the appealed claims relates to a novel device for emptying a hose bag. The novel device includes a helical cutting blade (Figs. 3, 4, 5, 6; claim 1).

The helical cutting blade has a helical cutting edge (see Figs. 4, 6).

Appellants' device, using its helical cutting blade, cuts the package material with a clean, S-formed cut. Because of this cut form, no pieces of the packaging (i.e. foil or plastic sheet) will be found in the material dispensed from the hose bag. Due to the movement of the helical cutting blade, there is initially a combined cutting and piercing action. This provides a clean cut, and the bag material (i.e., foil, plastic, etc.) is not allowed to break uncontrolled. No pieces will be separated from the

packaging material.

(6) ISSUE

The sole issue is whether claims 1-6 are unpatentable under 35 USC 102(b) as anticipated by King et al (US Patent 5,429,273).

(7) GROUPING OF CLAIMS

The claims stand or fall together.

(8) ARGUMENT

The Examiner, in the final rejection, argues simply that King et al shows a helical cutting blade. In reaching this conclusion, the Examiner relies on Webster's New World Dictionary, in which he finds a definition of a cutting blade as "the cutting part of a tool, instrument, or weapon". The Examiner goes on to argue that the tip of the cutting device 42 clearly meets this definition of a blade as it cuts open the bag and is clearly in a helical configuration as seen in Fig. 4.

The sharp part of King's tool is the tip, however, and the tip is not helical (see the tip of King's Fig. 6). Thus, King does not have a helical cutting blade, he just has a sharp point or tip.

The language quoted by the Examiner by Webster's indicates that a blade is "the cutting part". The cutting part of King, however, is the tip, and this is not helical. King therefore neither teaches nor suggests a "helical cutting device".

King's corkscrew is not a blade. It is simply a corkscrew with a piercing tip as described by King in column 5, lines 20, 21. Even the tip cannot be considered to have a cutting blade because it pierces - it does not "cut". The rest of King's helical

structure does not possess any sharp edges, which would be necessary to qualify as a blade. This would be counterproductive for the function of the threaded part which is not for cutting but provides for sealing together with the pouch foil.

Appellants' device, by contrast, has helical knife edges which provide an S-formed cut in the bag (page 3, line 12). Neither such form nor such function is described by King.

The one step motion/action of Appellants' device is the direct result of the helical construction and this advantage is surprising and unexpected in view of the prior art.

Accordingly, the rejection of claims 1-6 under 35 USC 102(b) as anticipated by King et al (USP 5,429,273) should now be reversed.

(9) CONCLUSION

Wherefore it is submitted that the final rejection is in error and should be reversed.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Appellants request that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 14-1263.

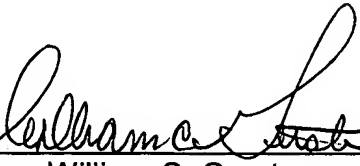
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Respectfully submitted


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By 
Julie Harting
Date December 22, 2003

(10) APPENDIX

The claims on appeal read as follows:

Claim 1 Apparatus for emptying a hose bag comprising a cap-like mating part fixed on one end of said hose bag, said cap-like mating part having a pipe-shaped outlet opening (3) and a helical cutting blade arranged therein for opening the hose bag.

Claim 2. Apparatus in accordance with claim 1, wherein the blade is rotatably displaceable into the outlet opening and in the hose bag direction through an insertable nozzle.

Claim 3 Apparatus in accordance with claim 1, wherein the blade is lockable in position.

Claim 4. Apparatus according to claim 2, wherein the nozzle seals against the inner wall of the pipe-shaped outlet opening.

Claim 5. Apparatus according to claim 3, wherein the nozzle seals against the inner wall of the pipe-shaped outlet opening.

Claim 6 Apparatus in accordance with claim 2, wherein the blade is lockable in position.